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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RONALD SUSCHANK,)	Case No. CV 11-3620-MLG
)	
Plaintiff,)	ORDER DENYING MOTION TO ALTER OR
)	AMEND JUDGMENT
v.)	
)	
MICHAEL J. ASTRUE,)	
Commissioner of Social)	
Security)	
)	
Defendant.)	
)	

On May 22, 2012, this Court entered an order and judgment dismissing Plaintiff's complaint for judicial review of the Commissioner's final decision denying Plaintiff's applications for Social Security Disability Benefits and Supplemental Security Income Benefits. On June 11, 2012, Plaintiff filed a Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 59(e). Defendant filed an opposition on June 18, 2012.

Rule 59(e) permits a court to reconsider and amend a previous order. However the rule is an "extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 944 (9th Cir. 2003) (quoting 12 James Wm. Moore et al., *Moore's Federal Practice* 59.30[4] (3d ed. 2000)). A motion for reconsideration under Rule 59(e) should

1 not be granted unless the court is presented with new evidence, the
2 movant demonstrates that the judgment was based on a clear error of
3 law or fact, or there has been an intervening change in controlling
4 law. *Id.*; see also *Kona Enterprises, Inc. v. Estate of Bishop*, 229
5 F.3d 877, 890 (9th Cir. 2000). A Rule 59(e) motion may not be used
6 to raise arguments or present evidence for the first time when they
7 could reasonably have been raised earlier in the litigation. *Id.*

8 The administrative hearing under review in this case was held
9 in August 2009. In the joint stipulation outlining the disputed
10 issues in this case, the thrust of Plaintiff's argument was that the
11 ALJ erred at step 5 of the sequential evaluation process because the
12 VE's testimony was inconsistent with the Dictionary of Occupational
13 Titles. Plaintiff now claims that the Court erred in not reversing
14 the Commissioner's decision because the Administrative Law Judge
15 relied on vocational expert testimony from a 2006 hearing in finding
16 that there were a significant number of jobs that Plaintiff could
17 perform in the national economy. Plaintiff claims that because of the
18 significant downturn in the economy between 2006 and 2009, the ALJ
19 erred in relying on the VE testimony from 2006.

20 As to the argument presented here, the entirety of Plaintiff's
21 argument in the joint stipulation was as follows: "First, there was
22 no vocational advisor at the remand hearing taking place on July 1,
23 2009. The ALJ is actually relying on vocational advisor testimony
24 from the first hearing on October 4, 2006." (Page citations omitted).
25 No legal argument was presented in support of this claim of error.
26 In the memorandum opinion order dismissing the claim, the Court
27 noted:

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1 Plaintiff also claims that the ALJ erred in relying
2 on the VE testimony from the 2006 hearing. However,
3 Plaintiff has failed to demonstrate that this was legal
4 error or that circumstances had changed between the
5 hearings that would have let to a different result had a
6 VE testified at the 2009 hearing.

7 Memorandum Opinion and Order, p. 6, n.1.

8 Plaintiff seeks to re-characterize the argument that was only
9 mentioned in passing in the first instance. Plaintiff now notes the
10 downturn in the economy between 2006 and 2009, and claims that the
11 ALJ violated Plaintiff's due process rights by not informing him that
12 the VE testimony from 2006 would be utilized.

13 However, this argument could have and should have been presented
14 when the case was at issue. Moreover, Plaintiff has failed to present
15 any controlling authority which would prohibit an ALJ from
16 considering VE testimony from a prior hearing. Plaintiff has
17 presented no new evidence, and has made no showing of a clear error
18 of law or fact, nor an intervening change in controlling law.
19 Plaintiff simply seeks to expand on an argument that was not
20 developed in the joint stipulation.

21 None of the extraordinary grounds required for granting a Rule
22 59(e) motion are alleged nor established in the motion. Relief is not
23 warranted. Accordingly, the Motion to Alter or Amend Judgment is
24 DENIED.

25 Dated: June 19, 2012

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Marc L. Goldman
United States Magistrate Judge